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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,295

02/06/2004

Joseph L. Ungari

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07/26/2006

BANNER & WITCOFF, LTD.

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EXAMINER

STASHICK, ANTHONY D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,295	<b>Applicant(s)</b> UNGARI, JOSEPH L.	
	<b>Examiner</b> Anthony Stashick	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 12-17, 20-29, 32, 33, 36-41 and 44-48 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 10, 11, 18, 19, 30, 31, 34, 35, 42 and 43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 8-9, 17, 25-29, 32-33 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Rice 3,631,614. Rice '614 discloses all the limitations of the claims including the following: a sole structure 14, 20 for an article of footwear comprising a sole; at least one cleat assembly 25, 28, 30, 36 pivotally connected to the sole (see Figure 1) such that a medial portion and a lateral portion of the cleat assembly (through the heel in Figure 1) can move upwardly and downwardly with respect to the sole; each cleat assembly pivots about an axis (32 is a ball, but pivots about an axis from heel to toe as well as otherwise. The use of the term "only" in the claims is also covered since the plate can only pivot about one axis, i.e. left to right, without pivoting about all axes) that extends generally from a heel portion to a toe portion of the sole; each cleat assembly comprises a base member 28 and at least two cleats 29, 30 extending from a lower surface of the base member; each cleat assembly comprises a first cleat (left side of Figure 1) in a lateral portion of the base member and a second cleat (right side of Figure 1) in a medial portion of the base member; each cleat assembly includes a first projection 28 extending from a front surface of the cleat assembly and a second projection 28 extending from a rear surface of the cleat assembly (when viewed from the side of the heel), the first and second projections received in first and second recesses (forward of the center point is one recess, rearward of the center point is another recess), respectively, formed in the sole; at least one recess formed in a lower surface of the sole (defined by 12), each recess configured to receive a portion of a cleat assembly as it pivots with respect to the sole (see Figure 1 with respect to shadow of cleat); each recess comprises a first portion (medial side) configured to

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receive a medial portion of a cleat assembly and a second portion (lateral side) configured to receive a lateral portion of a cleat assembly as the cleat assembly pivots with respect to the sole (see figure 1 for pivoting); each cleat assembly comprising a base member 28 pivotally secured to the sole; a first cleat 28, 30 secured to a lateral area of the base member; and a second cleat 28, 30 secured to a medial area of the base member; an upper and a sole secured to the upper (typical shoe used in rice '614).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12-16, 20-24, 36-40 and 44-48 are rejected under 35 U.S.C. 103(a) as being obvious over Rice 3,631,614 as applied above in view of Official Notice. Rice '614 as applied above discloses all the limitations of the claims except for all the specific locations of the cleat assemblies. Official Notice is taken that the use of multiple cleats on a shoe sole, i.e. in the heel arch and forefoot areas of the sole, to prevent slipping of the shoe in sports such as football and golf is well known. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place the wobble plate cleat of Rice '614 in multiple places of the user's shoe to prevent slippage when that area of the shoe comes into contact with the ground and starts to slip.

***Allowable Subject Matter***

5. Claims 6-7, 10-11, 18-19, 30-31, 34-35 and 42-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments filed May 8, 2006 have been fully considered but they are not persuasive. Applicant's argument is that the plate of Rice is not pivotably connected to the sole only about a single axis. Rice clearly shows that the ball 32 is connected at only one axis and therefore meets this limitation in the claim. The ball may be able to rotate etc., but where it is connected is about one axis, i.e. the center point of the ball. It appears that what applicant is attempting to claim is that the plate pivots only about a single axis, i.e. from left to right and not forward to back as well. Language to this effect does not appear in the claims.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how

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the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday through Thursday from 8:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS